

18
FILED

APR 30 1945

**CHARLES ELMORE DROPLEY
CLERK**

**IN THE
SUPREME COURT OF THE UNITED STATES**

OCTOBER TERM, 1944

No. 1147

**MARJORIE HAIR BURTON, INDIVIDUALLY AND AS
ADMINISTRATRIX OF THE ESTATE OF FREDERIC A. BURTON,
DECEASED,**

Petitioner,

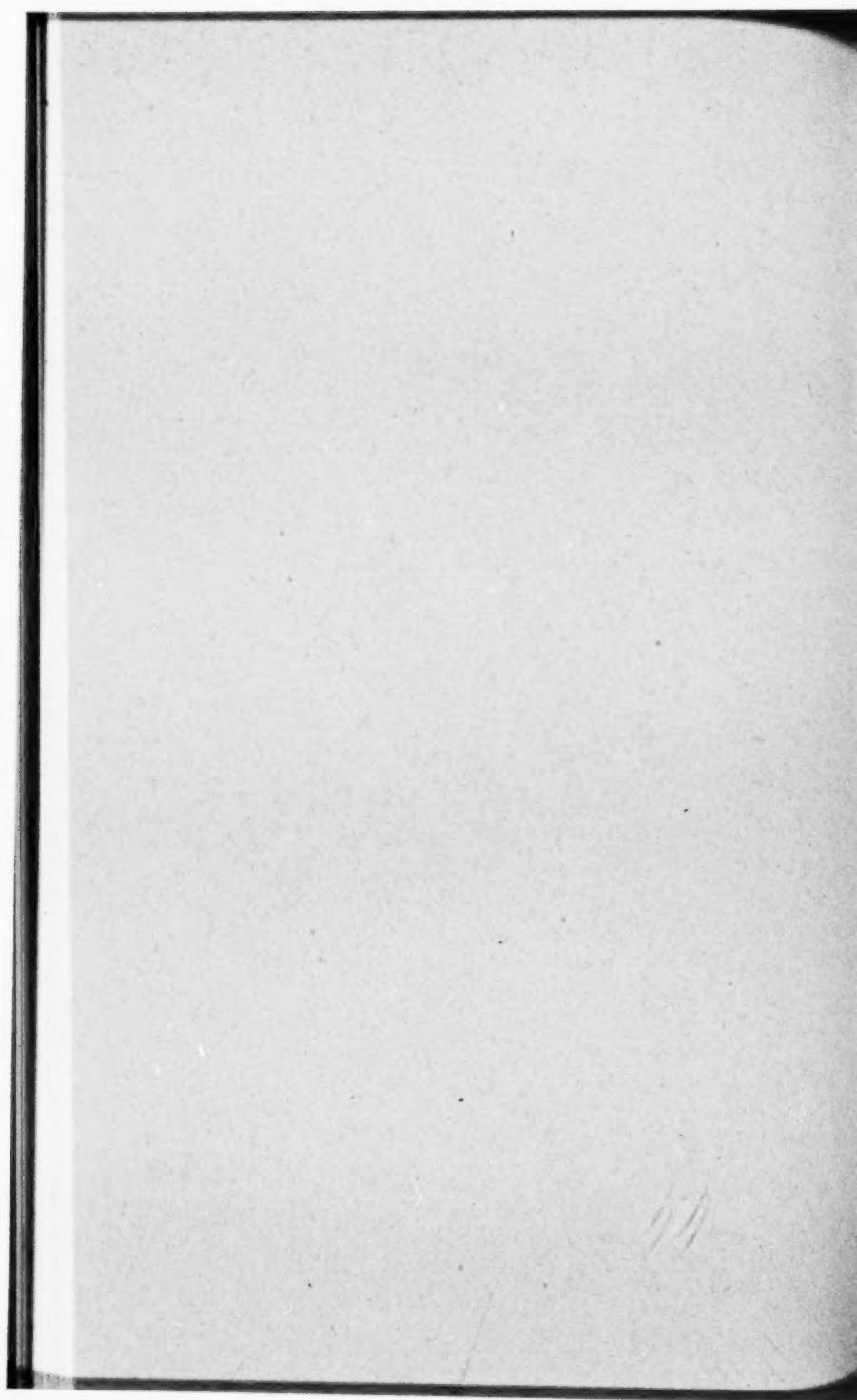
vs.

**FREEMAN COAL MINING CORPORATION, A CORPORATION,
WILLIAM J. KRUGLY AND MATERIAL SERVICE
CORPORATION, A CORPORATION,**

Respondents.

BRIEF OF RESPONDENTS TO PETITION.

HENRY S. BLUM,
Attorney for Respondents.





I N D E X.

	PAGE
Statement of Case	1
Summary of Argument	4
Argument	5

CASES CITED IN BRIEF.

In Re Ambassador Hotel Corporation, 124 Fed. 2d 435	8
In Re Flatbush Ave.-Nevins St. Corporation, 133 Fed. 2d 760.....	8
Groshenour v. George & Francis Ball Foundation, et al., 35 Fed. Supp. 566.....	8
Milkwagon Drivers' Union v. Meadowmoor Dairies, Inc., 312 U. S. 287.....	8
Prudence Realization Co. v. Geist, 316 U. S. 89.....	8

STATUTES CITED IN BRIEF.

Bankruptcy Act of 1938:	
Chap. VII, Sec. 70 (I).....	8
Chap. X, Sec. 224-1.....	7
Chap. X, Sec. 228.....	6

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1944

No. 1147

MARJORIE HAIR BURTON, INDIVIDUALLY AND AS
ADMINISTRATRIX OF THE ESTATE OF FREDERIC A. BURTON,
DECEASED,
Petitioner,

VS.

FREEMAN COAL MINING CORPORATION, A CORPORATION,
WILLIAM J. KRUGLY AND MATERIAL SERVICE
CORPORATION, A CORPORATION,
Respondents.

BRIEF OF RESPONDENTS TO PETITION.

STATEMENT OF THE CASE.

To correct the inaccuracies and omissions of the petitioner's Statement of the Case*, which consists of a reference to **Summary and Short Statement of Matters Involved**,** the respondents submit the following:

This is an action brought by respondents in the Circuit Court of Cook County, Illinois, as plaintiffs in equity to impress a trust in favor of the Freeman Coal Mining Corporation, one of the respondents, on the lands described in

* P. 2 of brief in support of petition.

** Petition for writ of certiorari, p. 2.

the complaint title to which was alleged to be in the name of Fred A. Burton, one of the petitioners (Rec. 27). The Freeman Coal Mining Corporation claimed as the grantee and successor in interest of one J. Roy Browning, Trustee appointed for the estate and property of the Burton Coal Company in proceedings under Chapter X of the Bankruptcy Act of the United States. The decree of the Circuit Court found the Freeman Coal Mining Corporation to be such grantee and successor in interest and such decree was affirmed by the Supreme Court of Illinois.

The Illinois Courts decided that Fred A. Burton was, prior to the institution of the proceedings to reorganize the Burton Coal Company, its president and while holding that office (Rec. 342) unlawfully took his company's money and bought with that money real estate for himself and his wife, Marjorie Hair Burton (Rec. 342). This the Illinois courts held to be in fraud of the rights of the Burton Coal Company, its creditors and shareholders and held the Burtons to be trustees for the Freeman Coal Mining Company, the successor in interest of the defrauded Company.

Subsequent to the purchase of the lands in question by Burton with his Company's funds, proceedings were instituted in the District Court of the United States for the Northern District of Illinois for the reorganization of the Burton Coal Company and its wholly owned subsidiaries, the Seymour Coal Mining Company and the Freeman Coal Mining Company (Rec. 342). It is in these proceedings that J. Roy Browning was appointed Trustee.

The proceedings to reorganize the Burton Coal Company were filed on September 9, 1938. The matter remained pending, and on January 15, 1942, a plan of reorganization was filed (Rec. 275) which was approved on February 4, 1942 (Rec. 305) and was thereafter duly consummated. The plan of reorganization dealt with "all the

estate and property of the Burton Coal Company, debtor, including therein, without limiting the generality of the foregoing * * * and all tangible and intangible property of the estate of the Burton Coal Company." (Rec. 295.) All liabilities and obligations of the debtor and Trustee were dealt with by the plan (Rec. 283). After providing for the payment in full in cash of all costs and expenses of the proceedings and all claims for wages entitled to priority in payment (Rec. ~~30~~³⁰), the plan made provision for every class of obligation according to their respective priorities (Rec. 285-9). The stockholders of the corporations received nothing except that as to Burton Coal Company, the common and preferred stockholders were given the right to subscribe to the capital stock of the new company (Rec. 290).

Pursuant to this plan and when consummated, the Freeman Coal Mining Corporation became grantee of and acquired the lands under consideration which up to the time of such conveyance were being mined by the Trustee, Browning (Rec. 195, 314). The Freeman Coal Mining Corporation was on the consummation of the plan of reorganization placed in physical possession of the lands described in the complaint and was so in possession at the time the complaint was filed seeking to establish its rights to the tract of land in question—said lands being a part of the property acquired by it pursuant to the plan of reorganization.

The general creditors of the Burton Coal Company and its wholly owned subsidiaries received no money under the plan of reorganization. The consideration moving to the unsecured creditors (Rec. 289, par. D) was the delivery to them of 15-year 3% sinking fund debentures of the Freeman Coal Mining Corporation for the principal amount of their claims together with one share of common stock of no par value of the Freeman Coal Mining Corporation

for each \$40 of the principal amount of such claims. The effect of the reorganization was to move out of the Trustee to the Freeman Coal Mining Corporation all of the assets and property of the Estate having value and evidencing the claims of the creditors entitled to distribution by the notes and stock of the reorganized company.

Upon the confirmation and consummation of the plan of reorganization, nothing more remained to be done to close the estate except the discharge of the Trustee and the entry of a final decree (Bankruptcy Act, 1938, Chap. X, Sec. 228). The administration of the estate in bankruptcy had been concluded.

SUMMARY OF THE ARGUMENT.

The petition and the brief in support thereof assume that the lands involved in this lawsuit were, at the time the respondent commenced the action upon which the decree complained of is based, a part of an estate in bankruptcy; that the decree complained of is an interference with the administration of an estate in bankruptcy by independent action.

This assumption is contrary to the record. The lands in question and all the rights of the bankruptcy trustee therein had been conveyed pursuant to the plan of reorganization and the orders of the bankruptcy court before the commencement of the present action by the Freeman Coal Mining Corporation, respondent.

ARGUMENT.

In the first paragraph of the petition for certiorari the petitioner asks:

"that a writ of certiorari issue to review a final decree of the Supreme Court of Illinois * * * which * * * decided that the Circuit Court of Cook County, Illinois, without authorization of the bankruptcy court, had jurisdiction to collect and direct the distribution of property which it determined constituted an asset of a debtor, whose estate was being administered by a court of bankruptcy under Chapter X of the Bankruptcy Act."*

The petitioner upon the foregoing premise proceeds to argue that the bankruptcy court having exclusive jurisdiction of the debtor and its property wherever located, this asserted jurisdiction by the State Court over the lands in the pending lawsuit was error to be corrected by this Court.

The petition and the petitioner's brief both proceed upon the assumption that the lands in question were a part of an estate in bankruptcy in the course of administration; that there was an estate in bankruptcy pending with a trustee in possession administering the estate having a right remaining in him that he might have asserted in the proper forum against the lands.

This premise is contrary to the facts in the record. There was no estate in bankruptcy in the course of administration. The Trustee in bankruptcy had conveyed the property out pursuant to a plan of reorganization the

* P. 2, Petition for writ of certiorari.

effect of which plan was to substitute the notes and securities of the Freeman Coal Mining Corporation for the claims filed and allowed in bankruptcy. The lands in question had been conveyed along with all other lands and tangible property of the Burton Coal Company and its subsidiaries to the Freeman Coal Mining Corporation.

The administration of the estate was at an end. Nothing remained except the formal order of discharge of the trustee and the entry of the final decree in the case (Bankruptcy Act of 1938, Sec. 228).

That the foregoing are the contentions of petitioner—made in disregard of obvious facts as they appear in the record and as found by the state court, appears from **“Questions Presented”*** by the petition. By question No. 1, petitioner presents the inquiry whether a court of bankruptcy, whose jurisdiction has been invoked, is given exclusive jurisdiction over all the assets and property of a debtor and the distribution thereof as it directs. The answer to this question may well be given in the affirmative without any comfort to the petitioner. Having been given exclusive jurisdiction over all the property and assets of the Burton Coal Company by the proceedings to reorganize, the bankruptcy court, pursuant to a plan of reorganization duly accepted by the required percentage of a creditors and confirmed by the court, authorized and directed its trustee to convey out the lands in question together with all other tangible property of the Burton Coal Company to the Freeman Coal Mining Corporation. J. Roy Browning, Trustee, thus authorized and directed upon the consummation of the plan, parted with title and possession to the lands in question and placed both in the Freeman Coal Mining Corporation, this plaintiff-respondent. The contention that the jurisdiction over the property so

* Petition, p. 9.

conveyed continues in the bankruptcy court, and that the trustee who has divested himself of title has notwithstanding his conveyance the sole right to commence an action with respect thereto, has no basis whatsoever in law.

In the Questions Presented No. 2,* we find the same misconception:

“Whether suits to recover assets belonging to a debtor estate must be brought by or in the name of the Trustee under the direction of the Bankruptcy Court?”

This question ignores the fact that when this suit was instituted the lands in question no longer belonged to the debtor estate. They had been conveyed by the Trustee pursuant to the plan of reorganization. That appears from the reading of the plan (Rec. 291-2), from the findings of the master in chancery of the Circuit Court to whom the cause was referred,** and the opinion of the Supreme Court of the State of Illinois affirming the decree of the Circuit Court of Cook County (Rec. 342).

The third question posed by the petitioner, whether a confirmed plan of reorganization is conclusive and binding upon the parties and the property in the estate, is answered by the express language of the Act (Bankruptcy Act of 1938, Chap. X, Sec. 224(1)). The answer to that is in the affirmative. We are unable to see and nothing appears in the petition or the brief to indicate in what way the answer to this question becomes a basis for the granting of the writ. The question is wholly irrelevant to the matters raised by the petition.

The cases cited by the petitioner that have any bearing at all on the questions raised by the petition deal with estates

* Petition for Certiorari, p. 9.

** No objections or exceptions to this finding of the Master were filed by petitioners.

pending in bankruptcy and were in each instance attempts to interfere with the administration of the estate in bankruptcy (*Groshenour v. George & Francis Ball Foundation et al.*, 35 Fed. Supp. 566; *Prudence Realization Co. v. Geist*, 316 U.S. 89).

A court of bankruptcy loses jurisdiction over the reorganized company or the property acquired by it after the confirmation of a plan of reorganization under Chap. X of the Bankruptcy Act.

Re Ambassador Hotel Corporation, 124 Fed. 2d 435;

Flatbush Ave.-Nevins St. Corporation, 133 Fed. 2d, 760.

Summarizing—the equitable title to the property involved in this case vested in the Freeman Coal Mining Corporation under the plan of reorganization and the instruments of conveyance executed to consummate this plan (Bankruptcy Act of 1938, Sec. 70(I)). Browning, the Trustee who had prior to the consummation of the plan of reorganization been mining the land, delivered possession to the Freeman Coal Mining Corporation, which was in possession and mined the land from that time forward. All this before this action was brought in the Circuit Court of Cook County.

The suit instituted by respondents was no interference with an estate in bankruptcy in the course of administration. There was no longer any estate in bankruptcy in the course of administration. The matter was closed by the confirmation and consummation of the plan of reorganization leaving nothing except the formal steps required to discharge the trustee and close the case. The facts were so found by the state courts. This court will not go behind the determination of these facts by the state court. (*Milkwagon Drivers' Union v. Meadowmoor Dairies, Inc.*,

312 U. S. 287). Independent of these findings by the state courts, the record establishes these matters beyond any possible controversy and proves vesting of the equitable title to these lands in the Freeman Coal Mining Corporation and the delivery of possession to it concurrently with the consummation of the plan. These lands passing out of the estate left the jurisdiction of the bankruptcy court and the grantee, the successor in interest to the Burton Coal Company and to the trustee, Browning was relegated to the forum having jurisdiction over titles to real estate within the State of Illinois.

The petition for certiorari should be denied.

Respectfully submitted,

HENRY S. BLUM,

Attorney for Respondents.